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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER	
HAMMER, KATIE L	
ART UNIT	PAPER NUMBER
1796	

NOTIFICATION DATE	DELIVERY MODE
08/05/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

Office Action Summary	Application No.	Applicant(s)	
	10/577,776	SOMOGYI ET AL.	
	Examiner	Art Unit	
	KATIE HAMMER	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 May 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7,9,11,12,19,20 and 24-34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7,9,11,12,19,20 and 24-34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This Office Action is in response to Applicant's Amendments filed on May 6, 2010. Claims 1-7, 9, 11-12, 19-20, 24-34 are pending for examination below. Claims 1 and 9 are currently amended. Claims 31-34 are newly added. Claims 8, 10, 13-18, 21-23 have been cancelled.

Any rejections not repeated below have been withdrawn in view of Applicant's amendments or arguments.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-7, 9, 11-12 and 19-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 16-

21, 23-29, 31-40 of copending Application No. 11/628,659. Although the conflicting claims are not identical, they are not patentably distinct from each other because App. No. 11/628,659 claims a similar process for dyeing leather comprising applying one anionic polyazo dye F with at least one alkaline-activable group of similar formula A (see claims 16, 21 of App. No. 11/628,659), the process where the dye F is at a pH from 3-6.5 and then at least 8 (see claim 26 of App. No. 11/628,659), dyeing by a one-stage process, before retanning, and at a temperature range of 10-60 degrees Celsius (see claims 27-29 of App. No. 11/628,659), per the requirements of instant claims 1-12 and 19-20 of the instant invention.

Although App. No. 11/628,659claims a similar method, the conflicting claims are not identical because App. No. 11/628,659 requires an anionic polyazo dye F with at least 3 diazo groups and group A where X is a C_1-C_4 alkyl or alkoxy and the instant claims require one dye F and group A where X is an electron-attracting radical, wherein the instant claims.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize such a process for dyeing leather by incorporating any type of dye. Such modification would be obvious because one having ordinary skill in the art would expect such a process to have similar properties to those claimed as the dye composition itself does not distinguish it from the process steps.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1 and 9-10 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: the active process steps for dyeing the leather, besides just the pH of the dye bath.

As currently claimed, the process only comprises treatment with an aqueous float comprising at least one dye F or a metal complex thereof at a pH of from 8.5 to 11. However, the instant specification examples teach several different pH values used, including acidic pH ranges, throughout the dyeing process and time periods at designated pH levels (see page 72 for the start of the dyeing examples). The Test Report filed on 8/28/2009 further confirms that multiple pH values and multiple method steps are used in the leather dyeing process and thus additional method steps need to be present in the instantly claimed method in order to clearly define the scope of the instant claims. Also, how is the dye bath maintained at this pH? Are chemicals added? How long does the leather remain in the dye-bath? Active method steps are required, as these are **process** claims.

Claim 10 claims that the dyeing occurs at a one stage process, however this is indefinite because there could still be steps before or after the dyeing itself that would cause the process to be multiple stages. Therefore, this claim needs more details with the independent claim method steps.

4. Claims 1 and 31-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 1, the electron-attracting radicals represented by (X) are not defined by the instant claim language of claim 1. What is the definition of an electron-attracting radical? Also, what is Q, the alkaline detachable group?

Claims 31-34 claim limitations for the polyazo dye F **product**, but the independent claim is a **method** for dyeing leather by treating the leather with an aqueous float comprising the dye F or a metal complex thereof in a float exhibiting a pH of from 8.5 to 11. Therefore, the instantly claimed dye component requirements need to be claimed as **active method steps** to further limit the independent claim.

Claim 33 recites the limitation "wherein Dk^1 and Dk^2 are independently of each other selected from the group consisting of benzene, naphthalene, and quinoline derived radicals… ". There is insufficient antecedent basis for this limitation in the claim, as instant claim 1 requires that at least one of Dk^1 and Dk^2 be a group represented by formula A, and claim 33 is broader than that limitation.

As to claim 34, the dye formulas are not defined. For instance, what is Dk^1, $Napht^1$, Tk^1, etc.?

Appropriate correction and clarification is required.

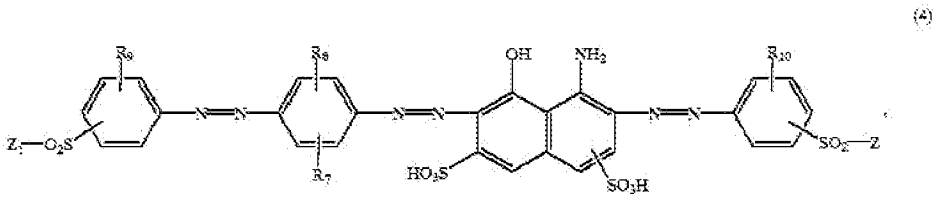
Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-7, 19-20, 24-26, 30, 33 rejected under 35 U.S.C. 103(a) as being unpatentable over Ruhlmann et al. (US 5,964,900) in view of Rosenbusch (DE 2638236 A). For ease of examination, all references to the Rosenbusch text are to the Derwent Abstract Acc. No. 1978-19783A.

As to claim 1, Ruhlmann et al. teaches a process for dyeing leather, comprising contacting said leather with a float that comprises at least one dye F which has at least one group represented by formula A as instantly claimed where X is an electron-attracting radical, k is 1, n is 0, B is a CH_2CH_2-Q group where Q is an alkaline-detachable group, and wherein said at least one dye is selected from the dyes of the general formulae (II) where Dk^1 is a formula of radical A, the $Napht^1$ is substituted by –OH and -NH_2, and one –SO_3H, subscript p=1, Kk^1 is an aromatic radical derived from benzene, Dk^2 is also a radical of formula A, subscript m=1, B is CH_2=CH_2 group, the subscript n=0, and the subscript k=0, B is a CH_2-CH_2-Q group wherein Q is an alkaline detachable group (reactive dyes of formula (4) suitable for dyeing leather and have excellent stability in the alkaline range, see formula 4 below from col. 5-6 and col. 10, lines 6-49).



Ruhlmann et al. differs from the instant claims by not explicitly teaching that the float exhibits a pH of from 8.5 to 11 for the dyeing of leather.

However, in an analogous art of method for dyeing leather, Rosenbusch teaches dyeing of leather from a common dye bath containing alkalis to give pH over 7.5, preferably 8-10 (see Derwent abstract).

Therefore, in view of the teaching of Rosenbusch, one having ordinary skill in the art at the time the invention was made would be motivated to modify the process for dyeing leather taught by Ruhlmann et al. by incorporating the alkaline pH range taught by Rosenbusch to arrive at the claimed invention because Ruhlmann et al. suggests that the dyes exhibit high fastness at alkaline conditions (see col. 10, lines 43-49). Rosenbusch teaches that it is known in the leather dyeing art to have a common dye bath containing alkalis to give a pH of 8-10 (see Derwent abstract), and therefore the combination is merely applying a known technique to a known method ready for improvement to yield predictable results. Thus, a person of ordinary skill in the art would be motivated to select the instantly claimed dye formula in a process for dyeing leather at an alkaline pH with a reasonable expectation of success for obtaining very deep, full shades in a single process and the use of conventional dyeing equipment (see Rosenbusch Derwent abstract), and would expect such a process to have similar properties to those claimed, absent unexpected results.

As to claims 2-7, 30, 33, Ruhlmann et al. teaches the process wherein at least one radical X in the formula A is an SO_3H group (R_1 is sulfo in the form of the free acid -SO_3H, see formula (4) above and col. 1, lines 32-64); the process wherein B in the formula A is -CH_2CH_2-OSO_3H (see col. 3, lines 32-35 definition of Z_1 and formula (4) below); the process wherein the group represented by formula A is attached to the dye molecule via an –N=N- group (see formula (4) above and col. 1, lines 32-50); the process wherein the at least one dye F is selected from the group consisting of an azo dye (see col. 1, lines 32-50 and formula (4) above); the process wherein n=0 (see formula 4 above); the process wherein the radical A is selected from the radical (A1) and (A2) (see col. 3, lines 32-35 definition of Z_1, col. 5-6 and formula (4) shown above); the process wherein Q is selected from the group consisting of chlorine, bromine, iodine (see formula (4) above where R_1 is a halogen, see col. 1, lines 32-54); the process wherein Dk^1 is a substituted benzene (see formula (4) above).

As to claim 19, Ruhlmann et al. teaches a dyed leather obtainable by a dyeing process according to claim 1 (see col. 10, lines 7-19)

As to claims 24-26, Rosenbusch teaches the leather dyeing process wherein the pH of the aqueous float ranges from 8.5 to 10.5 (see Derwent abstract); the leather dyeing process wherein the pH of the aqueous float ranges from 8.5 to 10 (see Derwent abstract); and the leather dyeing process wherein the pH of the aqueous float ranges from 9.5 to 11 (see Derwent abstract).

6. Claims 9, 11-12, 20, and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruhlmann et al. (US 5,964,900), in view of Rosenbusch (DE 2638236 A), further in view of Fennen et al. (US 2004/0025260 A1). For ease of examination, all references to the Rosenbusch text are to the Derwent Abstract Acc. No. 1978-19783A.

Ruhlmann et al. and Rosenbusch teach a process for dyeing leather as described above, however fail to teach or disclose an initial treatment at a pH from 3 to 6.5; the process wherein the dyeing occurs before retanning; and the process wherein the dyeing occurs at temperatures in the range from 10 to 60 degrees Celsius; the dyed leather used for handwear, footwear, automobiles, apparel or furniture; and the process occurring for a time of from 0.5 to 2 hours.

However, as to claims 9, 11-12, 20, and 27, Fennen et al., in analogous art of dyeing leather with azo dyes and metal complexes thereof, teaches the process which further comprises initially treating the lather with an aqueous float comprising at least one dye F at a pH in the range from 3 to 6.5 prior to said contacting (see para. 0002 and 0005); the process wherein the dyeing occurs before retanning (see para. 0001); the process wherein the dyeing occurs at temperatures in the range from 10 to 60 degrees Celsius (see para. 0022 and 0046); the dyed leather for handwear, footwear, automobiles, apparel, or furniture (see para. 0006); the process occurring for a time of from 0.5 to 2 hours (see para. 0046).

Therefore, in view of the teaching of Fennen et al., one having ordinary skill in the art at the time the invention was made would be motivated to modify the leather

dyeing process taught by Ruhlmann and Rosenbusch by incorporating the process conditions and retanning step as taught by Fennen et al. to arrive at the claimed invention because all three references teach the use of azo dyes for the dyeing of leather and Fennen et al. teaches improvements over prior leather dyeing processes by use of aqueous alkaline solutions (see para. 0009). Fennen et al. clearly teaches the use of the claimed process steps, and, thus, a person of ordinary skill in the art would be motivated to combine these process steps and pH requirements with a reasonable expectation of success for obtaining a dyed leather with high color intensity, outstanding wet fastness, and excellent grain lightness (see Fennen et al. abstract) would expect such a process to have similar properties to those claimed, absent unexpected results.

As to claims 28-29, Fennen et al. teaches the process where said contacting is carried out for four hours (see para. 0046) and that due to the depth of color achieved, no additional fixation step needs to be carried out (see para. 0008), yet makes no mention of the dye fixation percentage as determined by UV/VIS spectroscopy and HPLC. It is elementary that the mere recitation of a newly discovered function or property, that are obviously present in the dyeing method of the prior art does not cause a claim drawn to distinguish over the prior art. Additionally where the Patent Office has reason to believe that a functional limitation asserted to be critical for establishing novelty in the claimed subject matter may, in fact, be an obvious characteristic of the prior art, it possesses the authority to require the applicant to prove that the subject matter shown to be in the prior art does not possess the characteristic relied on by providing experimental evidence. In re Swinehart, 169 USPQ 226 (CCPA 1971).

Therefore, one of ordinary skill in the art at the time the invention was made could have arrived at the instantly claimed dyeing process for leather.

Response to Arguments

7. Applicant's arguments filed on April 30, 2010 with respect to claims 1-7, 9, 11-12, 19-20, 24-34 as rejected under 35 U.S.C. 103(a) have been considered but are moot in view of the new ground(s) of rejection presented above.

Applicant's arguments filed on April 30, 2010 regarding the obviousness type double patenting rejection and 35 U.S.C. 112, second paragraph rejection, have been fully considered but they are not persuasive.

As to the obviousness double patenting rejection, the Applicant argues that in the US 11/628,659 copending application X is alkyl or alkoxy groups, which are electron donating, whereas the instant independent claim X is an electron withdrawing group that withdraws electron density from group (A) thereby making (A) attractive to electrons,. As the claims are to a **process** for dyeing leather, one of ordinary skill in the art could have incorporated any type of dye and would have expected that the process would have similar properties to those claimed, as the dye composition itself does not distinguish it from the process steps. Burden is shifted to the Applicant to provide **evidence** that there is a patentably distinct difference between the electron donating groups at the claimed pH versus the electron donating groups.

As to the 35 U.S.C. 112, second paragraph rejection of claims 16 and 27, there is still only one active method steps for dyeing leather: that of treating the leather with an

aqueous float comprising at least one dye F, or a metal complex thereof, at a pH of not less than 8 and at most 11. There are no details provided for how this alkaline pH range is achieved and maintained (such as chemicals added or the novelty of the dye chemistry at that particular dye range), nor the time frame for dyeing of the leather, or other steps for dyeing leather taught in the instant specification.

Accordingly, these rejections are maintained.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATIE HAMMER whose telephone number is (571)270-7342. The examiner can normally be reached on Monday to Friday, 10:00am EST to 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Harold Y Pyon/
Supervisory Patent Examiner, Art Unit 1796

/KLH/
Katie L. Hammer, Art Unit 1796
July 29, 2010